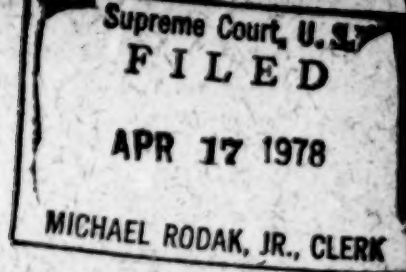


No. 77-593



In the Supreme Court of the United States
OCTOBER TERM, 1977

UNITED STATES OF AMERICA, PETITIONER

v.

LEROY SORRELL

UNITED STATES OF AMERICA, PETITIONER

v.

LOUIS THOMPSON

**ON PETITION FOR WRITS OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

**REPLY MEMORANDUM FOR
THE UNITED STATES**

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-593

UNITED STATES OF AMERICA, PETITIONER

v.

LEROY SORRELL

UNITED STATES OF AMERICA, PETITIONER

v.

LOUIS THOMPSON

*ON PETITION FOR WRITS OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT*

**REPLY MEMORANDUM FOR
THE UNITED STATES**

Although respondents in their joint response to our petition for writs of certiorari largely rely on familiar arguments, respondent Thompson makes the additional contention that his case is moot. That contention is incorrect.

Respondent Thompson suggests that his case was mooted by an order of the district court, dated September 16, 1977, dismissing the indictment against him. That order was issued pursuant to the mandate of the court of appeals, which was issued routinely on September 13, 1977. The government did not seek to stay issuance of the mandate while a petition for certiorari was being

filed. Nor did it appeal from the dismissal of the indictment.

Contrary to the argument of respondent Thompson (Br. in Opp. 10), however, it is well established that these events do not render the controversy moot. This Court has frequently recognized that issuance of the mandate by the court of appeals, the spreading of the mandate by the district court, and action taken in compliance with the terms of the mandate do not defeat the jurisdiction of this Court. See *Mancusi v. Stubbs*, 408 U.S. 204, 205-207; *Aetna Casualty Co. v. Flowers*, 330 U.S. 464, 467; *Eagles v. United States ex rel. Samuels*, 329 U.S. 304; *Carr v. Zaja*, 283 U.S. 52, 53; *The Conqueror*, 166 U.S. 110, 113; *Louisville & Nashville R.R. Co. v. Behlmer*, 169 U.S. 644, 648.¹ A timely petition for a writ of certiorari operates to suspend the finality of any judgment until this Court disposes of the case. If this Court grants certiorari and reverses the judgment of the court of appeals, that action nullifies the mandate of the court of appeals and, by the same token, the order of the district court entered pursuant thereto.

Were the rule otherwise, plainly undesirable consequences would ensue. When a decision of a court of appeals does not require any specific action by the parties, as was the case here, the government does not ordinarily seek a stay of the mandate while the Solicitor General decides whether to seek review by this Court. If a stay

¹For example, in *Carr v. Zaja*, *supra*, the court of appeals had ordered the release of an alien seaman who was about to be deported. The mandate of the court of appeals was not stayed, "but was issued to the District Court and spread upon its records * * *." 283 U.S. at 53. This Court rejected the argument that the case was thus "finished," holding that the issuance and spreading of the mandate did not defeat the jurisdiction of the Court. *Ibid*.

were always necessary to preserve this Court's jurisdiction, however, the government would have to file countless protective stay applications, since the decision to seek or forego certiorari frequently is not made before the issuance of the mandate. Whenever the court of appeals declined to stay its mandate, the government would then be forced to seek a stay from this Court in order to protect its opportunity to obtain review. No principle of law requires this tortuous and unnecessary procedure.

The *Thompson* case is not moot. The petition for writs of certiorari should therefore be disposed of in accordance with this Court's disposition of *United States v. Mauro*, No. 76-1596, and *United States v. Ford*, No. 77-52, argued February 27, 1978.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

APRIL 1978.